



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1998

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
5805 N. Lamar Boulevard
Austin, Texas 78773-0001

OR98-1545

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116745.

The Texas Department of Public Safety (the "department") received a request for "any and all information that the Department of Public Safety (DPS) collects, assembles, and/or maintains regarding DNA sample and/or information gathering and testing procedures." You indicate that you will release information concerning the department's policies and procedures for gathering and testing DNA samples. You argue, however, that DNA analyses information stored in the department's computer database is confidential by law and must not be released in this instance. You contend that the information must be withheld under section 411.147 of the Government Code in conjunction with section 552.101 of the Government Code.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies or representative samples of the specific information that was requested. Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile dated May 13, 1998, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public.

As of the date of this letter you have not provided our office with the information that

was requested. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, the requested information is presumed public. Open Records Decision No. 195 (1978). We note, however, that to the extent any responsive information is maintained in the department's DNA database, it may only be released as directed by section 411.147 of the Government Code. Gov't Code § 411.147; Gov't Code § 552.352 (distribution of confidential information is a criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 116745

cc: Ms. Jennifer S. Riggs
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